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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 O'M AND ASSOCIATES, LLC, an
12 Illinois limited liability company, d/b/a
13 O'Malley and Associates; PRESERVE
14 CAPITAL, LLC, an Illinois limited
liability company; and MBM
SETTLEMENTS, LLC, an Illinois limited
liability company,

15 Plaintiffs,

16 vs.

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18 BRENDAN K. OZANNE, BRIAN C.
19 DAWSON, AND DAWSON &
20 OZANNE, a California general
partnership, as escrow agent; MATTHEW
21 STOEN, individually and as manager and
agent for KODIAK FAMILY, LLC, a
22 Nevada limited liability company;
KODIAK FAMILY, LLC, individually
and as agent for XYZ CORPORATION,

23 Defendants.

CASE NO. 10-CV-2130 H (RBB)

**(1) TENTATIVE ORDER
REGARDING DEFENDANT
MATTHEW STOEN'S MOTION
TO DISMISS AND
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND
COMPLAINT**

**(2) ORDER DENYING AS
MOOT EX PARTE MOTION
FOR SHORTENED TIME**

24 On January 31, 2011, Defendant Matthew Stoen ("Stoen") filed a motion to dismiss
25 Counts I, III, IV, V, VI, VIII, and IX of Plaintiffs' complaint. (Doc. No. 104.) A hearing on
26 the motion to dismiss is set on March 14, 2011. On February 23, 2011, Plaintiffs filed a
27 motion for leave to amend complaint in lieu of response to the motion to dismiss. (Doc. No.
28 23.) A hearing is set on the motion for leave to amend on March 28, 2011. On February 23,

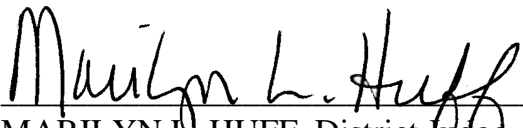
1 2011, Plaintiffs also filed an ex parte motion for shortened briefing on its motion for leave to
2 amend complaint to have it heard with the motion to dismiss on March 14, 2011. (Doc. No.
3 110.)

4 Federal Rule of Civil Procedure 15(a) allows a party leave to amend its pleading once
5 as a matter of right prior to service of a responsive pleading. Thereafter, "a party may amend
6 that party's pleading only by leave of the court or by written consent of the adverse party and
7 leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The decision
8 whether to grant leave to amend "is entrusted to the sound discretion of the trial court." Jordan
9 v. County of Los Angeles, 669 F.2d 1311, 1324 (9th Cir.1982), vacated on other grounds, 459
10 U.S. 810 (1982). Leave to amend is freely granted when justice requires. Moore v. R.G.
11 Industries, Inc., 789 F.2d 1326, 1328 (9th Cir. 1986).

12 Exercising its discretion and in the interests of justice and judicial economy, the Court
13 is inclined to grant the motion for leave to amend the complaint. Granting Plaintiff leave to
14 amend would render moot Defendant Stoen's motion to dismiss counts of the current
15 complaint. If Defendants wish to oppose this tentative order, recognizing that leave to amend
16 is freely granted, Defendants are directed to do so on or before **March 4, 2011**. In light of this
17 schedule, the Court also denies as moot Plaintiff's request for setting the motion for leave to
18 amend for March 14, 2011.

19 **IT IS SO ORDERED.**

20 Dated: February 25, 2011

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22 MARILYN D. HUFF, District Judge
23 UNITED STATES DISTRICT COURT
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